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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

JINJU ZHANG, an individual,

Plaintiff,

V.

BENLIN YUAN, an individual; HONG LIN, an individual; CAMIWELL, INC., a California corporation; CAMIWELL, INC. (CANADA), a Canadian corporation; BEIJING ASIACOM INFORMATION TECHNOLOGY CO., LTD., a Chinese corporation; ASIACOM AMERICAS, INC., a Virginia corporation; BANK OF AMERICA CORPORATION, a National Association and DOES 1-20, inclusive

Defendants.

Case No.: 3:23-cv-05818-VC

**PLAINTIFF'S OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT FILED BY DEFENDANTS
BEN LIN YUAN AND HONG LIN**

Date: August 15, 2024

Time: 10:00 a.m.

Judge: Hon. Vince Chhabria

Courtroom: 4 – 17th Floor

1 Plaintiff, JINJU ZHANG (“Plaintiff”), submits the following opposition to the Motion
 2 for Summary Judgment (“MSJ”) filed by Defendants Benlin Yuan (“Yuan”) and Hong Lin
 3 (“Lin”) (collectively “Defendants”). Pursuant to Civil Local Rule 7-3, Plaintiff also includes
 4 herewith Objections to the Declaration of Benlin Yuan at pages 16-21, *infra*.

5 **I. INTRODUCTION AND SUMMARY OF ISSUES**

6 Defendants’ have hastily filed this MSJ, arguing that there are no genuine disputes as to
 7 any material facts, and that Defendants are therefore entitled to judgment as a matter of law as
 8 to the following claims asserted by Plaintiff in his First Amended Complaint (“FAC”):

FAC ¶	Claim
FAC ¶¶ 38-44	First Cause of Action for Conversion
FAC ¶¶ 45-50	Second Cause of Action for Breach of Fiduciary Duty
FAC ¶¶ 61-65	Fifth Cause of Action for Preliminary Injunction
FAC ¶¶ 66-67	Sixth Cause of Action for Declaratory Relief

14 Plaintiff opposes Defendants’ MSJ, contending that there *are* genuine disputes as to
 15 material facts, and, as such, Defendants are *not* entitled to judgment as a matter of law.

16 Plaintiff also opposes Defendants’ MSJ for lack of evidence. Inter alia, Yuan unilaterally
 17 testifies on behalf of himself and Lin in violation of Federal Rules of Evidence (“Fed Rules
 18 Evid”) 801. (See Plaintiff’s Objections to Yuan Declaration, *infra*.)

19 For the reasons discussed herein, Defendants’ motion must be denied in its entirety.

20 **II. RELEVANT FACTS**

21 Camiwell Inc. (also known as Camiwell U.S. or Camiwell) is an information technology
 22 company based in Santa Clara, California. [Zhang Dec. ¶ 3.] At all times relevant, the directors
 23 of Camiwell were and are Zhang, Yuan, and Lin. [Zhang Dec. ¶ 3.] Camiwell shareholders are
 24 Yuan (40%), Zhang (35%), and Lin (25%).¹ [Zhang Dec. ¶ 3.]

25 // / / /

26 ¹ As discussed *infra*, share ownership is itself a disputed issue of material fact. Zhang contends he owns 35% of the
 27 shares. [Zhang Dec. ¶ 3.] Defendants contend that Plaintiff holds only a 30% interest. Defendants concede that
 28 Plaintiff’s shareholder interest—whether 30% or 35%—is disputed. [See Dkt. 101, Yuan Dec. ¶ 25-26.]

1 On July 20, 2020, Plaintiff filed Santa Clara County Case No. 20CV368535 against
 2 Yuan and Lin (the “State Case”). The State Case asserted four claims: actions against Camiwell
 3 for an accounting and for enforcement of Plaintiff’s inspection rights under the Corporations
 4 Code, and actions against Yuan and Lin for breach of fiduciary duty and for unfair business
 5 practices. [See Dkt. 102, Defendants’ Request for Judicial Notice “RJN”); Zhang Dec. ¶ 6.]

6 In September of 2023, the State Case was concluded when Plaintiff accepted separate
 7 offers to compromise pursuant to California Code of Civil Procedure section 998 made by
 8 Camiwell (\$353,000) and by Yuan and Lin (\$50,000). [Defendants’ RJN, Dkt. 102; Zhang
 9 Dec. ¶ 7.] Judgment was entered in favor of Plaintiff. [Zhang Dec. ¶ 7.]

10 After judgement was entered for Plaintiff’s in the State Case, Defendants began a new
 11 and distinct pattern of wrongful conduct separate from the dispute that was the subject of the
 12 State Case. It is Defendants’ conduct that occurred *after* the conclusion of the State Case that is
 13 the subject of Plaintiff’s current complaint before this Court. Specifically, Plaintiff alleges that:

- 14 • Defendants filed a Certificate of Election to Wind Up and Dissolve Camiwell
 15 without shareholder notice to Plaintiff and without Plaintiff’s consent.
 16 [Plaintiff’s RJN, Ex. 1; Zhang Dec. ¶ 18, Ex. A.]
- 17 • Defendants made unauthorized withdrawals totaling approximately \$672,000
 18 from Camiwell’s account at Bank of America (account number 3251 1222 0628),
 19 without Plaintiff’s knowledge or consent, as follows:
 - 20 ○ \$162,500 transfer to a Canadian company controlled by Yuan called
 21 Scinall Inc.;²
 - 22 ○ \$200,000 in the form of a cashier’s check payable to an unknown
 23 recipient;
 - 24 ○ \$309,438 in the form of cashier’s check payable to an unknown recipient.

25 [Zhang Dec. ¶¶ 11, 12, and 15.]

27 ² According to the Canadian government, Yuan and Lin are the directors and owners of Scinall. See Ex. D to the
 28 Zhang Declaration.

1 Yuan admits to these withdrawals [Dkt. 101, ¶¶ 31, 32], claiming that he and Lin were
 2 *entitled* to the money as *shareholder distributions* after Plaintiff received a \$353,000 payment from
 3 Camiwell to compromise the State Case. [Dkt. 101, ¶ 29(a) and (b); ¶ 34.]³ This assumes, though,
 4 that the \$353,000 payment was a shareholder distribution, and *there is absolutely no evidence of*
 5 *this*. Rather than a distribution, the \$353,000 payment was in settlement of Plaintiff's claims against
 6 Yuan and Lin for breach of fiduciary duty and unfair business practices, which Defendants wrong-
 7 fully caused Camiwell to make on their behalf in further breach of their fiduciary duties to Plaintiff.

8 Based on Defendants' post-settlement conduct, Plaintiff has asserted in the instant action
 9 claims for, inter alia, conversion, breach of fiduciary duty, injunction, and declaratory relief.
 10 Triable issues of material fact preclude summary judgment as to each of those claims.

11 III. **STANDARD OF REVIEW**

12 Summary judgment is only appropriate "if the movant shows that there is no genuine
 13 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.
 14 R. Civ. P. 56(a); see also *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323 (1986). A genuine issue
 15 of fact is one that could reasonably be resolved in favor of either party. A dispute is "material"
 16 only if it could affect the outcome of the suit under the governing law. *Anderson v. Liberty*
 17 *Lobby, Inc.*, 477 U.S. 242, 248–49 (1986).

18 "A moving party without the ultimate burden of persuasion at trial—usually, but not
 19 always, a defendant—has both the initial burden of production and the ultimate burden of
 20 persuasion on a motion for summary judgment." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*,
 21 210 F.3d 1099, 1102 (9th Cir. 2000). "In order to carry its burden of production, the moving

22
 23 ³ Yuan's declaration stated in part:

24 29. Thus, as far as Hong and I were concerned:

25 (a) the \$353,000 payment from Camiwell U.S. was Plaintiff's full shareholder distribution
 26 from the assets available at the time; and
 27 (b) Hong and I were entitled to all the remaining funds as our shareholder distributions
 28 (except for the amounts to pay the remaining corporate creditor).

34. Plaintiff is not the only shareholder entitled to distributions. As directors with a two to one voting
 majority, Hong and I have the power to authorize corporate distributions to ourselves, and we did not
 need Plaintiff's consent to authorize the distribution.

1 party must either produce evidence negating an essential element of the nonmoving party's
 2 claim or defense or show that the nonmoving party does not have enough evidence of an
 3 essential element to carry its ultimate burden of persuasion at trial." *Id.* (citing *High Tech Gays*
 4 *v. Defense Indus. Sec. Clearance Office*, 895 F.2d 563, 574 (9th Cir.1990). "In order to carry its
 5 ultimate burden of persuasion on the motion, the moving party must persuade the court that
 6 there is no genuine issue of material fact." *Id.* (internal citation omitted).

7 "If a moving party fails to carry its initial burden of production, the nonmoving party has
 8 no obligation to produce anything." *Id.* at 1103 (internal citation omitted). If, however, a
 9 moving party carries its burden of production, the nonmoving party must produce evidence to
 10 support its claim or defense. See *id.* Only if the nonmoving party fails to produce enough
 11 evidence to create a genuine issue of material fact, will the moving party's motion for summary
 12 judgment be granted. See *id.* But if the nonmoving party produces evidence to create a genuine
 13 issue of material fact, the nonmoving party defeats the motion. See *id.*

14 **IV. ARGUMENT**

15 **A. Defendants' Res Judicata Argument Fails.**

16 Defendants argue that res judicata precludes Plaintiff from asserting any shareholder
 17 distribution claims in the instant case. [Dkt. 100, p. 8.] Defendants cite to no law in support of
 18 this argument, instead citing only to the Yuan Declaration at ¶¶ 34-35. Defendants' argument is
 19 without merit for the following reasons.

20 First, the doctrine of res judicata "prevents relitigation of the same cause of action in a
 21 second suit between the same parties or parties in privity with them." *Mycogen Corporation v.*
22 Monsanto Company, 28 Cal.4th 888, 896 (2002). Res judicata bars a subsequent claim when
 23 "'(1) the decision in the prior proceeding is final and on the merits; (2) the present proceeding is
 24 on the same cause of action as the prior proceeding; and (3) the parties in the present proceeding
 25 or parties in privity with them were parties to the prior proceeding.' Upon satisfaction of these
 26 conditions, claim preclusion bars 'not only . . . issues that were actually litigated but also issues
 27 that could have been litigated.'" *Planning & Conservation League v. Castaic Lake Water*
28 Agency, 180 Cal. App. 4th 210, 226 (2009).

1 Here, res judicata is not applicable because the claims being made by Plaintiff arise from
 2 conduct that occurred *after* resolution of the State Case between the Plaintiff and Defendants.
 3 Thus, the claims that are the subject of the current complaint could not have been litigated in the
 4 State Case because they had not yet occurred when the State Case was being litigated.

5 In Plaintiff's FAC, it is clear that Plaintiff is not seeking damages for the same claims
 6 that were previously litigated and resolved in the State Case. FAC ¶¶ 32-34 clearly seeks
 7 redress for Defendants' wrongful conduct that occurred *after* the resolution of the State Case:

8 32. Following the 998 offers and acceptances in the State Case, Yuan and
 9 Lin resumed their looting and assault on Camiwell U.S.

10 33. On September 28, 2023 (less than a week after the 998 offers were
 11 accepted), Yuan and Lin filed a Certificate of Election to Wind Up and
 12 Dissolve Camiwell U.S. without Zhang's knowledge or consent.

13 34. Next, they made three separate and unauthorized withdrawals totaling
 14 almost \$672,000 from Camiwell U.S.'s account at Bank of America
 15 (account number 3251 1222 0628), all without Zhang's knowledge or
 16 consent, as follows:

- 17 a. \$162,500 transfer to a Canadian company controlled by Yuan
 18 called Scinal [sic: Scinall] Inc., Canada
- 19 b. \$200,000 in the form of a cashier's check payable to an
 20 unknown recipient
- 21 c. \$309,438 in the form of cashier's check payable to an
 22 unknown recipient

23 [Dkt. 71.] Winning a judgment against Defendants in the State Case does not deprive Plaintiff
 24 of the right to sue the same Defendants again for the Defendants' further subsequent conduct
 25 of a similar nature. *Lawlor v. National Screen Service Corp.*, 349 U.S. 322 (1955).

26 Second, in support of their res judicata argument, Defendants cite to Yuan's Declaration at
 27 ¶¶ 34-35. Plaintiff objects to Yuan's averments as unsubstantiated and disputed facts pursuant to
 28 Fed Rules Evid. 703, 901, 1004. [See Objections, *infra*.] The Court cannot reasonably accept

1 Yuan's testimony at ¶¶ 34-35 as credible and reasonable pursuant to Fed Rules Evid. 703, 901,
 2 1004. Further, Plaintiff Zhang disputes many of the factual assertions in Yuan's declaration.
 3 [See Zhang Dec. ¶ 2 et seq.] Because the Court cannot assess credibility in competing
 4 declarations, a triable issue of material fact is in dispute, precluding summary judgment.

5 **B. Defendants' Motion Must Be Denied as to Plaintiff's First Cause of Action,**
 6 **for Conversion, Because There Are Genuine Disputes as to Material Facts.**

7 Defendants argue they did not commit any wrongful act of conversion when they
 8 authorized and made distributions to themselves. [Dkt. 100, p. 8.] Defendants cite to *Lee v.*
 9 *Hanley*, 61 Cal. 4th 1225, 1240 (2015), in reciting the elements of conversion, which Plaintiff
 10 does not dispute. However, Defendants do not cite to any *evidence* in support of their argument,
 11 which is without merit.

12 Here, Defendants converted by transferring funds from Camiwell's bank account to
 13 themselves. Yuan admits in his declaration that he transferred \$671,983.73 from the Camiwell
 14 Bank of America accounts to himself and his wife on September 26 and 28, 2023. [See Dkt.
 15 101, Yuan Dec. ¶¶ 31, 32.]

16 This act of transferring funds was wrongful pursuant to Camiwell Bylaws, Article II, § 4
 17 and California Corporations Code ("Corp. Code") § 310. Camiwell Bylaws, Art. II, § 4, states
 18 that transactions taken by a director of Camiwell to financially benefit himself requires a special
 19 meeting and full disclosure to the shareholders pursuant to California Corporations Code
 20 ("Corp. Code") § 310. Consistent with the statute, section 4 of the Camiwell Bylaws [Zhang
 21 Dec., Ex. C] states in relevant part:

22 The notice will also state the general nature of any proposed action to be
 23 taken at the meeting to approve any of the following matters:

24 (i) A transaction in which a director has a financial interest,
 25 within the meaning of California Corporations Code §310

26 Corporations Code section 310(a)(1) states that financial transactions made by a director
 27 of a corporation for his or her own material financial interest are void or voidable unless fully
 28 disclosed to the shareholders:

(a) No contract *or other transaction between a corporation and one or more of its directors*, or between a corporation and any corporation, firm or association *in which one or more of its directors has a material financial interest, is either void or voidable because such director or directors* or such other corporation, firm or association *are parties* or because such director or directors are present at the meeting of the board or a committee thereof which *authorizes, approves or ratifies the contract or transaction, if:*

(1) The material facts as to the transaction and as to such director's interest are fully disclosed or known to the shareholders and such contract or transaction is approved by the shareholders (Section 153) in good faith, with the shares owned by the interested director or directors not being entitled to vote thereon...

Cal. Corp. Code § 310; see also *Cahle v. Stephens* (1931) 214 Cal. 89 (1931) (director was bound to act with utmost good faith in dealing with corporation).

Defendants wrongfully violated the Camiwell Bylaws and section 310 when they transferred funds from the Camiwell Bank of America accounts to themselves in September of 2023 without calling a shareholder meeting and disclosing the terms of the financial transaction to Plaintiff before acting.

Plaintiff was damaged because the funds taken belonged to Camiwell, and, as a shareholder in Camiwell, Plaintiff had a financial interests in its assets. Further, the conduct of the Defendants caused Plaintiff to be rightfully suspicious and anxious about other acts of the financial mismanagement against Camiwell being committed by Defendants about which Plaintiff may not have been notified as per the Bylaws. [Zhang Dec. at ¶ 15.]

Defendants argue that they were entitled to unilaterally make distributions to themselves after paying the judgments in the State Case because, they claim, (a) the payment of \$353,000 to Plaintiff constituted a distribution of his share of available cash; and (b) they collectively held 70% of the shares of Camiwell. Neither claim has merit, and both are underpinned by disputed issues of material fact.

There is no competent evidence that the payment of \$353,000 to Plaintiff constituted a distribution of his share of available cash. Both the 998 offers and the resulting judgments are devoid of any suggestion that the payment constituted a distribution of Plaintiff's share of available cash. On the contrary, Plaintiff understood that the payment was in settlement of his claims of unfair business practices and breach of fiduciary duty. [See Zhang Declaration at ¶ 7

1 and 14.] There therefore exists a disputed issue of material fact as to whether the payment of
 2 \$353,000 to Plaintiff constituted a distribution or simply the compromise of a disputed claim.

3 In September of 2023, the State Case was concluded when Plaintiff accepted two offers
 4 to compromise pursuant to Code of Civil Procedure section 998, and judgment was entered in
 5 Plaintiff's favor. [Plaintiffs RJD, Dkt. 102; Zhang Dec. ¶¶ 7 and 14.] The operative language
 6 of each 998 offer is essentially identical:

7 Pursuant to Section 998 of the Code of Civil Procedure ("CCP"),
 8 Defendants Benlin Yuan and Hong Lin ("Defendants") in the above-captioned
 9 action hereby offer to have judgement entered in favor of Plaintiff Jinju Zhang
 10 ("Zhang") and against Defendants in the amount of \$50,000, including reasonable
 11 attorney's fees and costs up to and including the date of this offer. [¶] This offer
 12 does not constitute an admission of liability by or on behalf of Defendants.

13 * * * *

14 Pursuant to Section 998 of the Code of Civil Procedure, Defendant
 15 CAMIWELL INC. in the above-captioned action hereby offers to have judgment
 16 entered in favor of Plaintiff Jinju Zhang ("Zhang") and against Defendant
 17 CAMIWELL INC. in the amount of Three Hundred and Fifty-Three Thousand
 18 Dollars and Zero Cents (\$353,000.00) inclusive of Plaintiff and including the date
 19 of this offer. [¶] This Offer does not constitute an admission of liability by or on
 20 behalf of Defendant CAMIWELL INC.

21 Similarly, the operative language of each judgment entered in favor of Plaintiff is
 22 essentially identical:

23 Judgment is hereby entered, against Defendants Benlin Yuan and Hong
 24 Lin (together, "Defendants") and in favor of Plaintiff Jinju Zhang, in the above-
 25 entitled action, pursuant to Section 998 of the California Code of Civil Procedure,
 26 in the sum of Fifty Thousand Dollars (\$50,000) including reasonable attorney's
 27 fees and costs up to and including the date of the offer. The judgment against
 28

1 Defendants does not constitute an admission of liability by or on behalf of
2 Defendants.

3 * * *

4 Judgment is hereby entered, against Defendant Camiwell Inc.
5 (“Defendant”) and in favor of Plaintiff Jinju Zhang, in the above-entitled action,
6 pursuant to Section 998 of the California Code of Civil Procedure, in the sum of
7 Three Hundred and Fifty-Three Thousand Dollars and Zero Cents (\$353,000.00)
8 inclusive of Plaintiff’s fees and costs up to and including the date of the offer. The
9 judgment against Defendant does not constitute an admission of liability by or on
10 behalf of Defendant.

11 Nothing in either the offers or the judgments suggests in any way that the payment of \$353,000
12 to Plaintiff was a shareholder distribution.

13 As argued below, there is also a disputed issue of material fact as to whether Zhang held
14 (and holds) 30% or 35% of the shares of Camiwell. Because there are disputed issues of
15 material fact regarding Defendants’ conversion of the funds from Camiwell’s Bank of America
16 accounts for their personal benefit, Defendants’ motion must be denied.

17 **C. Defendants’ Motion Must Be Denied as to Plaintiff’s Second Cause of**
18 **Action, for Breach of Fiduciary Duty, Because There Are Genuine**
19 **Disputes as to Material Facts.**

20 As directors of Camiwell, Defendants concede that they owe a fiduciary duty to
21 Plaintiff. [Dkt. 100, p. 8.] Defendants argue that they did not breach their fiduciary duty to
22 Plaintiff when they made cash distributions to themselves because as “directors holding a two to
23 one voting advantage” Defendants had the power to authorize the withdraws to themselves.
24 [Dkt. 100, p. 9.] Defendants further argue that Plaintiff sustained no damage or injury by
25 Defendants’ conduct. [Dkt. 100, p. 9.] Defendants cite no law or evidence in support of their
26 argument, which is without merit.

27 It should require no citation to authority that a majority of shareholders may authorize
28 distributions to themselves at the expense of the minority. Such distributions would constitute a

1 breach of Defendants' fiduciary duties. "It is a violation of this duty for officers, or directors or
 2 majority stockholders to give away or appropriate to themselves any corporate assets." *Mueller*
 3 *v. MacBan*, 62 Cal. App. 3d 258, 274 (1976).

4 There are at least two instances of breach of fiduciary duty by Defendants: (1)
 5 Defendants' undisclosed transfer of \$671,983.73 to themselves on September 26 and 28, 2023;
 6 and (2) the purported dissolution of Camiwell on September 27-28, 2023.

7 1. Breach of Fiduciary Duty #1

8 As set forth in B., *supra*, there is (at a minimum) at least one disputed issue of material
 9 fact exists as to whether Defendants wrongfully appropriated corporate assets—*i.e.*, the
 10 \$671,983.73 in Camiwell's bank accounts. Defendants contend that the Camiwell 998 offer,
 11 acceptance, and resulting judgment in the amount of \$353,000 was a shareholder distribution,
 12 whereas Plaintiff contends that it was the settlement of a disputed claim. Nothing in the 998
 13 offer or the judgment supports Defendants' position, and Zhang flatly disputes Yuan's averment
 14 in this regard.

15 Defendants presumably deny that they were obligated to give notice and conduct a
 16 meeting before deciding to transfer to themselves the bulk of the remaining cash of Camiwell,
 17 or contend that they did give such notice and/or held such a meeting. Zhang contends that they
 18 were obligated to give notice, but they failed to do so; and that they were obligated to conduct a
 19 meeting, but they failed to do so.

20 2. Breach of Fiduciary Duty #2

21 Yuan admits in his declaration that he and Lin asked the Camiwell attorney to dissolve
 22 Camiwell after settlement of the State Case. [Dkt. 101, ¶ 30] Indeed, Yuan and Lin each signed
 23 a Certificate of Election to Wind Up and Dissolve on September 27, 2023, and the document
 24 was filed with the California Secretary of State on September 29, 2023. [RJN, Ex. 1; Zhang
 25 Dec. at ¶ 18, Ex. F.]

26 Plaintiff alleges that Defendants' breached their fiduciary duty when they purported to
 27 dissolve Camiwell without calling a special meeting of shareholders as required by Camiwell
 28 Bylaws, Art. II, Section 4, and without conducting a vote and obtaining a 70% affirmative vote

1 for dissolution as required by Camiwell Bylaws, Art. III , §14. Camiwell Bylaws, Art. II,
2 Section 4 requires a special shareholder meeting:

3 The notice will also state the general nature of any proposed action to be
4 taken at the meeting to approve any of the following matters:
5

6 (iv) A voluntary dissolution under Corporations Code §1900

7 Moreover, the Camiwell Bylaws, Art. III, §14, requires a affirmative vote by 70% of the
8 shareholders to dissolve the corporation:

9 The following decisions would need the written consent or affirmative
10 vote of the holders of at least seventy percent (70%) of the common stock of the
11 Corporation, and any such act or transaction entered into without such consent or
12 vote shall be null and void ab initio, and of no force or effect:

13 (a) liquidate, dissolve or wind-up the business and affairs of the
14 Corporation, effect any merger or consolidation or any other
15 deemed liquidation event, or consent to any of the foregoing

16 [Zhang Dec., Ex. C.]

17 Thus, when Defendants prepared and signed the dissolution forms and filed those forms
18 with the California Secretary of State on behalf of Camiwell, they were violating the Camiwell
19 Bylaws by not calling a shareholder meeting and not obtaining the requisite 70% shareholder
20 approval.

21 Defendants contend that, together, they held 70% of the Camiwell shares. That, though,
22 is also a disputed issue of material fact. Plaintiff contends that he holds a 35% interest in
23 Camiwell, and the documentary evidence confirms this. In a document entitled “Unanimous
24 Written Consent of the Board of Camiwell Inc.” and dated June 16, 2018, Plaintiff, Yuan, and
25 Lin acknowledged the initial share distribution was 40% to Yuan, 30% to Lin, and 30% to
26 Zhang; however, the document goes on to say the following:

27 /////
28 /////

1 RESOLVED FURTHER, that the Corporate[sic] approve the voluntary
 2 and free transfer of 25,000 shares of common shares from Hong Lin to Jinju
 3 Zhang, and after the transfer the shareholding structure will be as follows:

Name	Class of Shares	Total Number of Shares	Shareholding Percentage
Benlin Yuan	Common	200,000	40%
Jinju Zhang	Common	175,000	35%
Hong Lin	Common	125,000	25%

9 See Ex. A to the accompanying Declaration of Jinju Zhang.

10 In a document entitled “Share Transfer Agreement” and with an effective date of July 9,
 11 2018, Zhang, Yuan, and Lin acknowledged this transfer. See Ex. B to the Zhang Declaration,
 12 and ¶ 4. Either a disputed issue of material fact exists as to Zhang’s share ownership, or, as
 13 Plaintiff contends, he in fact holds 35% of the shares of Camiwell. Under either scenario,
 14 Defendants’ motion must fail.

15 **D. Defendants’ Motion Must Be Denied as to Plaintiff’s Fifth Cause of**
 16 **Action, for Preliminary Injunction, Because There are Genuine**
 17 **Disputes as to Material Facts.**

18 Defendants argue that Plaintiff has no stake or interest in any of Camiwell’s remaining
 19 funds, and as officers of Camiwell, Defendants have an obligation to use the remaining funds to
 20 pay the company bookkeeper. [Dkt. 100, p. 9.] Defendants further argue there is no reason
 21 why the company should not be dissolved. [Dkt. 100, p. 9.] Defendants cite to California
 22 Corporations Code section 6610(a) for the principle that corporation may elect to voluntarily
 23 wind up and dissolve. [Dkt. 100, p. 10.] Defendants do not cite to any evidence, and their
 24 argument is without merit.

25 To obtain an injunction one must show “that the defendant’s wrongful acts threaten to
 26 cause irreparable injuries, ones that cannot be adequately compensated in damages.” *Intel*
 27 *Corp. v. Hamidi*, 30 Cal. 4th 1342, 1352 (2003). Here, Plaintiff can adequately demonstrate a
 28

1 strong likelihood that Yuan and Lin will continue to take actions that will cause harm to
 2 Camiwell if the Court does not issue a preliminary injunction to preserve the status quo.

3 Yuan admits to making significant cash withdrawals from Camiwell's Bank of America
 4 accounts for himself and Lin, claiming that Camiwell should be dissolved and that he and Lin
 5 are entitled to Camiwell funds without notice to Plaintiff and without shareholder approval.

6 29. Thus, as far as Hong and I were concerned:

7 (a) the \$353,000 payment from Camiwell U.S. was
 8 Plaintiff's full shareholder distribution from the assets available
 9 at the time; and

10 (b) Hong and I were entitled to all the remaining funds
 11 as our shareholder distributions (except for the amounts to pay
 12 the remaining corporate creditor).

13 * * * *

14 31. On September 26, 2023, I withdrew \$162,500.00 from the company's
 15 Bank of America savings account. This was about 18% of the remaining balance
 16 contained in the Company's three bank accounts (or \$883,821.891).

17 32. However, on September 27, 2023, I received a notification from the
 18 Bank of America that Plaintiff changed the password and the contact email
 19 associated with these accounts. After receiving another bank notification that I
 20 was locked out of the bank accounts of Camiwell Inc. and worrying about the
 21 safety of my wife's and my share of the shareholder distributions, on September
 22 28, 2023, I transferred another \$509,438.73 from the Bank of America savings
 23 account to my personal bank account.

24 [See Dkt. 101, Yuan Declaration at ¶¶ 29, 31-32.]⁴

25
 26 ⁴ As argued *supra*, payments made to Plaintiff in resolving the State Case do not entitle Defendants to any
 27 distributions. Those payments were made to satisfy a judgment; they were not a shareholder distribution. [See Dkt.
 28 102.] Moreover, any efforts by Defendants to pay themselves without full disclosure and shareholder approval, and
 any attempt by Defendants to dissolve Camiwell without calling a shareholder meeting and obtaining 70% approval,
 is void or voidable as per the Camiwell Bylaws, Art II, § 4, Art II, § 14.1, and Corp. Code §301.

1 It is clear from Yuan's own averments that there is a high likelihood that irreparable
 2 harm will occur if Defendants are not enjoined from acting under their false beliefs and
 3 assumptions that Camiwell is dissolved and that they are entitled to all remaining Camiwell
 4 funds. While the parties are litigating their rights, the Court should preserve the status quo and
 5 prevent Defendants from taking any further actions pertaining to Camiwell to prevent
 6 irreparable harm. For these reasons, there is a genuine dispute of material facts regarding
 7 Plaintiff's claim for injunctive relief, and Defendants' motion should therefore be denied.

8 **E. Defendants' Motion Must be Denied as to Plaintiff's Sixth Cause of**
 9 **Action, for Declaratory Relief, Because There Are Genuine Disputes**
 10 **as to Material Facts.**

11 Defendants argue that Plaintiff is not entitled to any of Camiwell's remaining funds
 12 because he already received his full distribution. [Dkt. 100, p. 10.] Defendants further argue
 13 that the remaining funds should be used to pay the company bookkeeper, with any leftover
 14 funds distributed to the Defendants as the remaining shareholders. [Dkt. 100, p. 10.]
 15 Defendants cite to no legal authorities or evidence in support of their argument, which is
 16 without merit.

Defendants' Contention	Plaintiff's Contention
<p>17 Plaintiff owns 30% of the shares in Camiwell. 18 Yuan owns 40% of the shares in Camiwell. 19 Lin owns 30% of the shares in Camiwell. 20 [Dkt. 101, Yuan Dec. ¶¶ 5, 11.]</p>	<p>Plaintiff owns 35% of the shares in Camiwell. Yuan owns 40% of the shares in Camiwell. Lin owns 25% of the shares in Camiwell. [Zhang Dec. ¶¶ 3-5, Ex. A; see also Dkt. 101, Yuan Dec. ¶¶ 11, 16, 25, 26 acknowledging the dispute in percentage of shares owned by Plaintiff Zhang.]</p>
<p>21 22 23 24 25 26 27 28</p> <p>Defendants were not required to hold any shareholder meeting before transferring distributions to themselves on September 26, 2023, after settling the State Case with Plaintiff. [Dkt. 101, Yuan Dec. ¶ 29, 31.]</p>	<p>Pursuant to the Camiwell Bylaws, Art II, § 4 and Corp Code § 310, Defendants were required to hold a shareholder meeting before transferring \$162,500 in Camiwell distributions to themselves only on September 26, 2023, after settling the State Case with Plaintiff. [Zhang Dec. ¶¶ 14-17, Ex. C.]</p>

1	Defendants were not required to hold any shareholder meeting before dissolving Camiwell.	Pursuant to the Camiwell Bylaws, Art II, § 4 and Art. III, § 14, Defendants were required to hold a shareholder meeting and obtain 70% shareholder approval by vote before dissolving Camiwell.
3	[Dkt. 101, Yuan Dec. ¶ 29, 31.]	[RJN, Ex. 1 ; Zhang Dec. ¶¶ 14-17, Ex. C.]

5 For these reasons, there is a genuine dispute of material facts regarding Plaintiff's
 6 entitlement to declaratory relief, and Defendants' motion must therefore be denied.

7 V. **OBJECTIONS TO EVIDENCE**

8 In support of their motion, Defendants submitted a single declaration with a single
 9 exhibit. As set forth below, Plaintiff objects to the Declaration of Benlin Yuan.

10 Generally, Yuan's declaration is objectionable for three reasons. First, Yuan
 11 impermissibly testifies on behalf of his wife, Lin, throughout the entirety of the declaration. All
 12 such testimony must be stricken as hearsay pursuant to Fed. Rules Evid 602 and 801. This
 13 dramatically compromises the value Defendants' arguments, especially as to Lin.

14 Second, Yuan's declaration is grossly compromised by the inordinate amount of hearsay
 15 testimony it includes pertaining to third parties and lack of foundation and personal knowledge
 16 as to Plaintiff. All such testimony must also be stricken pursuant to Fed. Rules Evid 602 and
 17 801. This further compromises the value Defendants' arguments.

18 Third, Yuan's declaration makes sweeping statements for which there is no adequate
 19 foundation, verification, or substantiation. All such testimony must be stricken pursuant to Fed.
 20 Rules Evid 602 and 901, or, in the alternative, the Court should give such testimony reduced
 21 consideration pursuant to Fed. Rules Evid 611.

22 Specifically, Plaintiff objects to Yuan's declaration as follows:

23 YUAN DEC. ¶	24 CONTENT	25 OBJECTION
24 ¶ 3	25 “Beijing Asiacom Info. Technology Co. Ltd. (“Beijing Asiacom”) is a People’s Republic of China information technology (“IT”) company that offers services to its Chinese customers worldwide.”	26 Lacks Personal Knowledge Fed. Rules Evid 602 Lacks Foundation Fed. Rules Evid 901
27 ¶ 3	28 “In 2013, an officer of Beijing Asiacom, who was Hong’s high school friend, contacted her	Hearsay Fed. Rules Evid 801

1	and asked if she and I would be interested in 2 forming a Canadian company to perform IT 3 services for Beijing Asiacom's clients in 4 Canada.”	Lacks Personal Knowledge Fed. Rules Evid 602
3	¶ 3 “We agreed and formed Camiwell Inc. Canada (“Camiwell Canada”).	Hearsay Fed. Rules Evid 801
4	¶ 4 “In 2014, Beijing Asiacom wanted to expand 5 its services to clients in the U.S. They asked us 6 to form a separate U.S. company for this 7 purpose.”	Lacks Personal Knowledge Fed. Rules Evid 602 Lacks Foundation Fed. Rules Evid 901
8	¶ 4 “[W]e needed someone who lived in the U.S. 9 to venture with us. We thought of Plaintiff 10 Zhang (“Plaintiff”), a U.S. resident whom we 11 had previously met at a church”	Hearsay Fed. Rules Evid 801
10	¶ 5 “We asked Plaintiff if he would be interested 11 in partnering with us to set up a U.S. company 12 for servicing Beijing Asiacom’s U.S. clients.”	Hearsay Fed. Rules Evid 801
12	¶ 7 “In May 2018, Beijing Asiacom informed us 13 that they wanted to acquire both Camiwell 14 Canada and Camiwell U.S., in anticipation of 15 Beijing Asiacom’s planned IPO in China in 16 2019.”	Hearsay Fed. Rules Evid 801
15	¶ 8 “Plaintiff negotiated with Beijing Asiacom 16 directly during the acquisition discussions.”	Hearsay Fed. Rules Evid 801 Lacks Personal Knowledge Fed. Rules Evid 602 Lacks Foundation Fed. Rules Evid 901
17	¶ 9 “Hong had agreed to give Plaintiff 5% of her 18 shares of the company if Plaintiff cooperated 19 during the acquisition process and the 20 acquisition of the company was successful.”	Hearsay Fed. Rules Evid 801
21	¶ 10 “In November of 2018, with its IPO in China 22 looming, Beijing Asiacom informed Plaintiff 23 that they were abandoning its efforts to acquire 24 Camiwell U.S.”	Hearsay Fed. Rules Evid 801 Lacks Personal Knowledge Fed. Rules Evid 602 Lacks Foundation Fed. Rules Evid 901
25	¶ 11 “[W]e contended that Hong and I owned 70%, 26 and that Plaintiff owned 30%.”	Hearsay Fed. Rules Evid 801
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¶ 11	“Plaintiff contended, however, that he owned 35% even though the acquisition fell through.”	Lacks Personal Knowledge Fed. Rules Evid 602 Lacks Foundation Fed. Rules Evid 901
¶ 18	“In the State Court Case, Plaintiff complained that he was entitled to an accounting and his share of corporate assets, but that his distribution could not be determined until Hong and I reimbursed the corporation for diversion and misappropriation of Camiwell’s corporate assets and business opportunities to Camiwell Canada, Beijing Asiacom and Asiacom U.S.”	Hearsay Fed. Rules Evid 801 Best Evidence Fed. Rules Evid 1004
¶ 18	“Plaintiff also alleged that I falsified financial reports in 2017, 2018 and 2019, and also included his claim that he was entitled to a 35%, and not a 30%, distribution.”	Hearsay Fed. Rules Evid 801 Best Evidence Fed. Rules Evid 1004
¶ 19	“Hong and I denied Plaintiff’s claims contending generally that we had no control over who Beijing Asiacom decided to use as its service vendors and that we gained nothing as a result of its decision to use its own subsidiary Asiacom U.S. instead of Camiwell U.S.”	Hearsay Fed. Rules Evid 801 Best Evidence Fed. Rules Evid 1004
¶ 19	“In fact, it was our opinion that Plaintiff’s failure to close the acquisition deal with Beijing Asiacom damaged us because we lost the premium that we could have obtained from Beijing Asiacom for selling it a going concern with employees and operating assets.”	Hearsay Fed. Rules Evid 801 Relevance 401 Fed. Rules Evid
¶ 19	“Hong and I knew that we had very little bargaining power when Beijing Asiacom wanted to acquire it.”	Lacks Personal Knowledge Fed. Rules Evid 602 Speculation Fed. Rules Evid 701 Lacks Foundation Fed. Rules Evid 901
¶ 20	“We still puzzle why Plaintiff failed to appreciate that he was negotiating with very little bargaining leverage.”	Relevance 401 Fed. Rules Evid Hearsay Fed. Rules Evid 801

1	¶ 21	“We had already incurred hundreds of thousands of dollars in attorneys’ fees, and the State Court Case was scheduled for a five-day jury trial on September 11, 2023, which was going to result in ten’s [sic.] of thousand of dollars in more fees.”	Speculation Fed. Rules Evid 701
2	¶ 22	“In an attempt to settle the case, Hong and I authorized two settlement offers: one for Hong and myself on the personal claims against us, and one on behalf of Camiwell U.S. on Plaintiff’s accounting claim against the company.”	Hearsay Fed. Rules Evid 801 Settlement Communications Fed. Rules Evid 408
3	¶ 23	“For Hong and myself, we believed that we had absolutely no culpability with regard to diverting Camiwell U.S. assets and business opportunities, but we decided to offer \$50,000 to resolve these claims with no admissions of liability. We estimated that we would have incurred more than this amount in preparing for and participating in a five day jury trial.”	Hearsay Fed. Rules Evid 801 Settlement Communications Fed. Rules Evid 408 Speculation Fed. Rules Evid 701
4	¶ 24	“As to Camiwell U.S., Plaintiff did not allege any wrongdoing against Camiwell U.S. He was only seeking a shareholder accounting and payment over of the amount of his account.”	Hearsay Fed. Rules Evid 801 Best Evidence Fed. Rules Evid 1004
5	¶ 25	“During his deposition, Plaintiff testified that he understood that any salary paid to his wife was “considered as part of the distribution for [him] as a shareholder.” See, Zhang Deposition Transcript Volume 1, 85:15-86:10 attached here as Exhibit A.	Hearsay Fed. Rules Evid 801 Best Evidence Fed. Rules Evid 1004
6	¶ 26	“Based upon the remaining Company cash then on hand (which was \$1,236,821.89), shareholder accounting information that we obtained in discovery, and consideration of the issue whether Plaintiff was a 30% or 35% shareholder, and the fact that we valued the Company claims against us at only \$50,000.00, we offered to have the Company pay Plaintiff \$353,000 in full satisfaction of his shareholder accounting claim.”	Lacks Foundation Fed. Rules Evid 901 Best Evidence Fed. Rules Evid 1004 Settlement Communications Fed. Rules Evid 408
7	¶ 27	“Our analysis at the time was that if the case had gone to trial and that a full accounting for shareholder distributions had been litigated,	Hearsay Fed. Rules Evid 801
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1	Plaintiff would have received less than the \$353,000 we offered, and Hong and I would have received more than what was left over had Plaintiff took his \$353,000. As such, we thought the offer should have been attractive to Plaintiff.”	Relevance 401 Fed. Rules Evid Settlement Communications Fed. Rules Evid 408 Speculation Fed. Rules Evid 701
2	¶ 28 “On September 6, 2023, Plaintiff accepted both offers. On or around September 8, 2023, I transferred two settlement payments to Plaintiff separately via wire transfer, one from the remaining balance of the company’s bank accounts (for \$353,000) and the other one from my personal account (for \$50,000).”	Hearsay Fed. Rules Evid 801 Settlement Communications Fed. Rules Evid 408 Best Evidence Fed. Rules Evid 1004
3	¶ 29 “Thus, as far as Hong and I were concerned:...”	Hearsay Fed. Rules Evid 801 Relevance 401 Fed. Rules Evid
4	¶ 30 “With the settlement completed, Hong and I asked the company’s attorney to continue with the dissolution that I had initiated in 2019.”	Hearsay Fed. Rules Evid 801
5	¶ 31 “On September 26, 2023, I withdrew \$162,500.00 from the company’s Bank of America savings account. This was about 18% of the remaining balance contained in the Company’s three bank accounts (or \$883,821.891).”	Best Evidence Fed. Rules Evid 1004
6	¶ 32 “However, on September 27, 2023, I received a notification from the Bank of America that Plaintiff changed the password and the contact email associated with these accounts. After receiving another bank notification that I was locked out of the bank accounts of Camiwell Inc. and worrying about the safety of my wife’s and my share of the shareholder distributions, on September 28, 2023, I transferred another \$509,438.73 from the Bank of America savings account to my personal bank account.”	Hearsay Fed. Rules Evid 801 Best Evidence Fed. Rules Evid 1004
7	¶ 33 “Our transfers did not deplete the company’s accounts. The remaining balance of \$211,902.61 was more than sufficient to pay	Lacks Foundation Fed. Rules Evid 901

1	the remaining creditors (bookkeeper, tax preparation, and legal), who were owed no more than \$60,000.00. We do not understand why Plaintiff would object to our receiving shareholder distributions since he received his own distributions (approximately \$503,000, the \$353,000 plus the \$150,000 he previously received that he acknowledged were shareholder distributions during discovery)."	Best Evidence Fed. Rules Evid 1004 Relevance 401 Fed. Rules Evid
6	¶ 34 "As directors with a two to one voting majority, Hong and I have the power to authorize corporate distributions to ourselves, and we did not need Plaintiff's consent to authorize the distribution."	Legal Conclusion Fed. Rules Evid 703 Lacks Foundation Fed. Rules Evid 901 Best Evidence Fed. Rules Evid 1004
11	¶ 35 "The distributions to ourselves did not damage Plaintiff because the distributions came from the same pool of funds from which he had already received his distribution. Camiwell U.S. has been out of business since 2019 and did not and has not acquired or generated any additional assets or funds following the \$353,000 distribution payment to Plaintiff."	Legal Conclusion Fed. Rules Evid 703 Lacks Foundation Fed. Rules Evid 901 Best Evidence Fed. Rules Evid 1004
16	¶ 35 "The \$211,902.61 remaining after our distributions is also more than enough left in its accounts to pay the remaining company creditors and to complete its dissolution."	Legal Conclusion Fed. Rules Evid 703 Lacks Foundation Fed. Rules Evid 901 Best Evidence Fed. Rules Evid 1004

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1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that Motion for Summary
3 Judgment filed by Defendants Benlin Yuan and Hong Lin be denied in its entirety so that this
4 matter may proceed to trial on the merits.

5
6 Dated: July 29, 2024

SAC Attorneys LLP

7
8 By: /s/ Brian A. Barnhorst

9 James Cai, Esq.

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